

DATE: June 12, 1987

TO: Charles G. Abdelnour, City Clerk
FROM: City Attorney
SUBJECT: Appeals From the Decision of the Planning
Commission or Board of Zoning Appeals

Your memorandum of June 1, 1987 to City Attorney John Witt regarding the above-captioned matter, a copy of which is attached as Enclosure (1), has been referred to me for a reply. You ask whether the grounds upon which the Council grants a hearing (assuming they do so) should be memorialized.

We believe that is an excellent suggestion and recommend that, in the future, you request us by route slip to prepare a resolution memorializing the action taken by the Council if they do decide to hear the matter.

We would also take this occasion to remind the Mayor and Council that the criteria which they must use to make that determination to hear the matter are clearly set forth in Section 101.0240. They are:

1. The appellant was denied the opportunity to make a full and complete presentation to the Planning Commission;
2. New evidence is now available that was not available at the time of the Planning Commission hearing;
3. The Planning Commission decision was arbitrary because no evidence was presented to the Planning Commission that supports the decision;
4. The development presents a City-wide planning issue on which guidance of the City Council is required and the matter is of City-wide significance;
5. The decision of the Planning Commission is inconsistent with applicable Community Plans or the General Plan for those areas not having a Community Plan; or
6. The Planning Commission decision was in conflict with adopted Council Policy or the Municipal Code.

Based upon the appeal and the departmental analysis which is before them, any motion to grant a hearing should, to be procedurally effective, clearly state the reason as outlined above and if the motion passes, this reason will be duly memorialized in the formal resolution we will prepare. It is not appropriate for the maker of the motion to suggest that we select a reason for the hearing as that is not our role and such a suggestion would be in derogation of the Council's responsibilities to make such a determination.

Thus, we respectfully request that the Presiding Officer assure that the motion incorporate an applicable reason.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

CMF:js:920.1(x043.2)

Enclosure(1)

ML-87-60